

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA,)
vs.)
Plaintiff,) Case No. 4:20-CR-00212
DEBRA LYNN MERCER-ERWIN (1))
KAYLEIGH MOFFETT (2))
Defendants.)

DEFENDANTS' NOTICE OF ADVICE OF COUNSEL DEFENSE

Defendant Debra Lynn Mercer-Erwin (“Ms. Mercer-Erwin”), by and through her attorneys, Joe E. White, Jr., Charles C. Weddle III, Kate C. White, and Matthew P. Cyran, and Defendant Kayleigh Moffett (“Ms. Moffett”), by and through her attorney, Brett Behenna (collectively referred to as the “Defendants”), respectfully, over Defendants’ objection, file the Defendants’ Notice of Advice of Counsel Defense pursuant to the Court’s Order (Dkt. #377.) In support of their Notice, the Defendants state as follows:

1) The Defendants intend to call the following witnesses in their case in chief:

- a. Scott McCreary;
- b. Henry Hoss;
- c. Jonathan Epstein; and
- d. Gary Evans.

2) All of the aforementioned witnesses are practicing attorneys with specialties in aviation law.

3) The Defendants anticipate that all of the witnesses will testify that the Defendants sought their advice in good faith prior to taking any actions in order to determine the lawfulness of their conduct and that the lawyers were apprised of all material facts known to the Defendants and acted in accordance with the advice provided to the lawyers.

4) The Defendants further anticipate that the witnesses will testify that they communicated their legal opinions to members of the Government's prosecution team, specifically Special Agent Ernest Payton, and others within the United States Department of Commerce and that their communications were ignored.

5) The Defendants intend to request a jury instruction regarding the advice of counsel defense should the evidence be presented as anticipated.

Respectfully submitted,

s/ Joe E. White, Jr.

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s/ W. Brett Behenna

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*Attorney for the Defendant,
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CERTIFICATE OF DELIVERY

I hereby certify that on this 7th day of April, 2023, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing, which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Joe E. White, Jr. _____

JOE E. WHITE, JR.